U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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Date: OCT 12 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, approved the employment-based immigrant visa petition on March 30, 2007 and then revoked approval of the petition in a Notice of Revocation (NOR) on September 18, 2008. The petitioner appealed the matter to the Administrative Appeals Office (AAO) on September 29, 2008.[1] The AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

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[1] The AAO notes that the petitioner filed one Form I-290B regarding two separate Form I-140 petitions. The petitioner indicated on the Form I-290B that it was filing the appeal regarding Form I-140 receipt number [redacted] and Form I-140 receipt number [redacted] The director had revoked [redacted] on September 18, 2008 and denied [redacted] on September 22, 2008. The AAO notes that the petitioner only paid one fee with its September 29, 2008 appeal. U.S. Citizenship and Immigration Services (USCIS) is statutorily prohibited from providing a petitioner with multiple adjudications for a single filing with a single fee. The initial filing fee for the Form I-290B covers the cost of the AAO's adjudication of a single appeal. Pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service. *See* http://www.whitehouse.gov/omb/circulars/a025/a025.html. Counsel for the petitioner lists September 18, 2008 as the date of revocation on the Form I-290B and lists the revocation specifically in the accompanying brief. Accordingly, the AAO is adjudicating the Form I-290B as an appeal of the director's September 18, 2008 revocation of Form I-140 receipt number [redacted].

The petitioner is an information technology business. It seeks to employ the beneficiary permanently in the United States as a product manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, which the U.S. Department of Labor (DOL) approved, accompanied the petition. As set forth in the September 18, 2008 NOR, the director determined that the beneficiary did not meet the specified job requirements or qualify for the classification sought. Specifically, the director determined that the beneficiary did not possess the requisite education or experience. The director revoked the petition's approval accordingly.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a U.S. doctorate or a foreign equivalent degree." *Id.*

The director did not automatically revoke the petition under any of the following grounds listed at 8 C.F.R. § 205.1(a)(3)(iii): death of the petitioner, written notice of withdrawal or termination of the employer's business. Thus, the director's decision falls under the regulatory provisions set forth at 8 C.F.R. § 205.2. That regulation, however, requires "notice" and an opportunity to offer additional evidence in response to a notice of intent to revoke (NOIR). 8 C.F.R. § 205.2(b). *See also Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

Upon review of the record, the AAO has determined that the director never issued an NOIR to the petitioner, providing the petitioner with the opportunity to offer evidence in support of the petition and to respond to the grounds for the potential revocation. 8 C.F.R § 205.2(b). Therefore, the AAO will remand the case to the director for further action.

In view of the foregoing, the director's NOR will be withdrawn. The petition is remanded to the director. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision. Should the decision be adverse, the director must first issue an NOIR before issuing an NOR. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be issued only after a notice of intent to revoke and certified to the Administrative Appeals Office for review.